

### **32.2 Pretrial Services, Presentence, and Probation/Supervised Release Records.**

- (a) **Confidentiality.** Information contained in pretrial services, presentence, and probation/supervised release records is confidential and may not be disclosed except as authorized by statute, regulation, or court order.
- (b) **Filing Under Seal.**

  - (1) **Records Sealed.** Except as stated in Nebraska Criminal Rule 32.1.1, and unless a judge orders otherwise in a specific case, the clerk files under seal all pretrial services, presentence, and probation/supervised release records that the clerk receives from pretrial services and the probation office.
  - (2) **Unsealed for Appeal Purposes.** The clerk unseals presentence reports to copy and send them to the Office of the Clerk of the United States Court of Appeals for the Eighth Circuit.
- (c) **Agency Access.**

  - (1) **Agency Use.** Although the information in pretrial services, presentence, and probation/supervised records remains confidential, those records may be accessed by the United States Sentencing Commission, the United States Parole Commission, the United States Attorney, the Bureau of Prisons, the defendant, and the defense attorney unless:

    - (A) a statute, regulation, or court order prohibits disclosure;
    - (B) a party or the pretrial services or probation officer has an order from the assigned district or magistrate judge prohibiting disclosure; or
    - (C) the assigned district or magistrate judge bars disclosure.

A judge may bar or refuse to bar disclosure for any reason, and the judge may make this decision without notice or a hearing.
  - (2) **Obligations of Agency Recipients.** When information in pretrial services, presentence, and probation/supervised release records is disclosed under Nebraska Criminal Rule 32.2(c)(1), the recipient of the disclosure must keep the information confidential and use the information only for administering justice. Any writing containing the

information must be returned at the court's request.

- (3) **Return of Copy Given to a Party.** All copies of the presentence report given to a pro se defendant must be returned to the United States Probation Office after sentencing. No copies or any dissemination of the presentence report or information in the report may be made. Unauthorized copying or disclosure is an act in contempt of court and is punished accordingly.
- (d) **Requests for Disclosure.** Each judge may authorize the disclosure of pretrial services, presentence, and probation/supervised release records. Oral or written requests for an order authorizing disclosure should be made to the district or magistrate judge assigned to the case for which disclosure is sought. The judge may make or refuse to make a disclosure for any reason and without notice or a hearing. However, in deciding, the judge should consider:
- (1) any promise of confidentiality made to the source of information;
  - (2) the privacy interests of those who provided the information;
  - (3) the need to maintain the court's access to the information by providing confidentiality to sources of information;
  - (4) the purpose for which the information is requested and the materiality of the information for that purpose;
  - (5) the availability of the information from other sources;
  - (6) whether the potential harm from the disclosure outweighs the potential benefits of the disclosure; and
  - (7) whether the disclosure is consistent with the purposes of the Bail Reform Act of 1984 or the Sentencing Reform Act of 1984.
- (e) **Subpoenas for Disclosure.** If disclosure of probation or pretrial services records or a request for the testimony of a probation or pretrial services officer is sought by subpoena or other judicial process, the probation or pretrial services officer must request the court orally or in writing for authority and instructions before responding to the subpoena or other judicial process.
- (1) **Authorized Disclosure.** If the court rules that a probation or pretrial services officer is authorized to testify or to produce records, the

authorization is limited to only those matters directly relevant to the demonstrated need. The court's order must identify the records to be produced and the authorized subject matter of the testimony.

- (2) **Unauthorized Disclosure.** If the court rules that a probation or pretrial services officer is not authorized to testify or to produce records, then the court must issue an order quashing the subpoena or other judicial process under the authority of the Supremacy Clause, Article VI of the Constitution of the United States.